



1 delivered either by hand or certified mail, return receipt requested, to the  
2 Banking Department, State of New Hampshire, 64B Old Suncook Road, Concord, NH  
3 03301. Such hearings will be scheduled within 10 days of the request. If the  
4 Respondents fail to appear at the hearing after being duly notified, such  
5 person shall be deemed in default, and the proceeding may be determined against  
6 the Respondents upon consideration of the Order to Show Cause, the allegations  
7 of which may be deemed to be true.

8 If the Respondents fail to request a hearing within 30 calendar days of  
9 receipt of such order or reach formal settlement with the Department within  
10 that time frame, then such person shall likewise be deemed in default, and the  
11 orders shall, on the thirty-first day, become permanent, and shall remain in  
12 full force and effect until and unless later modified or vacated by the  
13 commissioner, for good cause shown.

14 **STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

15 The Staff Petition dated February 14, 2008 (a copy of which is attached  
16 hereto) is incorporated by reference hereto.

17 **ORDER**

18 WHEREAS, finding it necessary and appropriate and in the public  
19 interest, and consistent with the intent and purposes of the New Hampshire  
20 banking laws, and

21 WHEREAS, finding that the allegations contained in the Staff Petition,  
22 if proved true and correct, form the legal basis of the relief requested,

23 It is hereby ORDERED, that the Respondent shall show cause why:

- 24 1. Administrative penalties of \$2,500.00 should not be imposed  
25 against each named Respondent; and
2. Statutory penalties of \$8,900.00 should not be imposed against  
Respondent Madison pursuant to RSA 397-A:11; and
3. Respondent Madison's license should not be revoked; and

1 It is hereby ORDERED that:

2 4. The outstanding invoice in the amount of \$600.00 shall be  
3 paid; and

4 5. Failure to request a hearing within 30 days of the date of  
5 receipt of this Order shall result in a default judgment being  
6 rendered, license revocation and administrative penalties  
7 imposed upon the defaulting Respondent.

8 SIGNED,

9 Dated: 2/14/08

10 /S/  
11 PETER C. HILDRETH  
12 BANK COMMISSIONER  
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signed for the notice on or about July 30, 2007.

6. The Respondent submitted some of the requested examination material on August 10, 2007.

7. On or about September 19, 2007 the Examiner in Charge (hereinafter "EIC") notified Respondent Madison via US Certified Mail (mail piece number 7006 2760 0002 2476 6814) that the Officer Questionnaire and loan files had not been received by the Department. The Respondent received and signed for the notice on or about September 25, 2007.

8. To date the Respondent has failed to facilitate the examination.

9. August 20, 2007 was the end of the 21-day grace period.

10. It has been 178 days since August 20<sup>th</sup> without any further production of documents.

11. The Department sent an invoice in the amount of \$600.00 for the cost of the exam to Respondent Madison on November 20, 2007. To date the invoice remains unpaid.

#### ISSUES OF LAW

The staff of the Department, alleges the following issues of law:

1. The Department realleges the above stated facts in paragraphs 1 through 10.

2. The Department has jurisdiction over the licensing and regulation of persons engaged in mortgage banker activities pursuant to NH RSA 397-A:3.

3. Pursuant to New Hampshire Banking law, RSA 397-A:12 the Department may examine the business affairs of any licensee or

1 any other person, whether licensed or not, as it deems necessary  
2 to determine compliance with this Chapter and the rules adopted  
3 pursuant to it and with the Consumer Credit Protection Act, as  
4 amended (15 U.S.C. 1601 et seq.). In determining compliance,  
5 the Department may examine the books, accounts, records, files,  
6 and other documents or matters of any licensee or person. RSA  
7 397-A:12 further requires every person being examined, and all  
8 of the officers, directors, employees, agents, and  
9 representatives of such person shall make freely available to  
10 the commissioner or his examiners, the accounts, records,  
11 documents, files, information, assets, and matters in their  
12 possession or control relating to the subject of the examination  
13 and shall facilitate the examination. The Respondent violated  
14 this provision by failing to facilitate the examination.

15 4. RSA 397-A:11 provides for a fine of \$50 per day for every day  
16 that records are not produced after 21 days.

17 5. RSA 397-A:12 provides that the expense of such examination shall  
18 be chargeable to and paid by the licensee.

19 6. RSA 383:11 I provides that no institution shall be charged or  
20 pay less than one full day for the cost of the examination.

21 7. RSA 383:11 III provides that payments of the charges for the  
22 cost of the examination be made within 60 days of receipt of the  
23 notice.

24 8. RSA 397-A:21 IV provides that any person who, either knowingly  
25 or negligently, violates any provision of Chapter 397-A, may  
upon hearing, and in addition to any other penalty provided for

1 by law, be subject to an administrative fine not to exceed  
2 \$2,500, or both. Each of the acts specified shall constitute a  
3 separate violation, and such administrative action or fine may  
4 be imposed in addition to any criminal penalties or civil  
5 liabilities imposed by New Hampshire Banking laws.

6 9. RSA 397-A:21 V provides that every person who directly or  
7 indirectly controls a person liable under this section, every  
8 partner, principal executive officer or director of such person,  
9 every person occupying a similar status or performing a similar  
10 function, every employee of such person who materially aids in  
11 the act constituting the violation, and every licensee or person  
12 acting as a common law agent who materially aids in the acts  
13 constituting the violation, either knowingly or negligently, may,  
14 upon notice and opportunity for hearing, and in addition to any  
15 other penalty provided for by law, be subject to suspension,  
16 revocation, or denial of any registration or license, including  
17 the forfeiture of any application fee, or the imposition of an  
18 administrative fine not to exceed \$2,500, or both. Each of the  
19 acts specified shall constitute a separate violation, and such  
20 administrative action or fine may be imposed in addition to any  
21 criminal or civil penalties imposed.

22 **RELIEF REQUESTED**

23 The staff of the Department requests the Commissioner take the following  
24 Action:

- 25 1. Find as fact the allegations contained in section I of this petition;  
2. Make conclusions of law relative to the allegations contained in

1 section II of the this petition;

2 3. Order the Respondents to Show Cause why its license should not be  
3 revoked;

4 4. Assess fines and administrative penalties in accordance with RSA 397-  
5 A:21, for violations of Chapter 397-A, in the number and amount equal  
6 to the violations set forth in section II of this petition; and

7 5. Take such other administrative and legal actions as necessary for  
8 enforcement of the New Hampshire Banking Laws, the protection of New  
9 Hampshire citizens, and to provide other equitable relief.

10 **RIGHT TO AMEND**

11 The Department reserves the right to amend this Staff Petition and to  
12 request that the Commissioner take additional administrative action.

13 Nothing herein shall preclude the Department from bringing additional  
14 enforcement action under RSA 397-A or the regulations thereunder.

15  
16 Respectfully submitted by:

17  
18 /s/  
James Shepard  
19 Staff Attorney

2/14/08  
Date